

EXHIBIT 2

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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In re:

3 CUSTOMS AND TAX ADMINISTRATION
4 OF KINGDOM OF DENMARK
(SKATTEFORVALTNINGEN) TAX
5 REFUND SCHEME LITIGATION,

18-MD-2865 (LAK)

Teams Conference

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New York, N.Y.
April 26, 2024
10:30 a.m.

10 Before:

11 HON. LEWIS A. KAPLAN,

U.S. District Judge

14 APPEARANCES

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BY: SHARON MCCARTHY

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1 THE COURT: Good morning, everybody.

2 I'm calling with this request for letters rogatory.

3 And these are all lists, I think, but, I thought it better to
4 straighten things out before rather than after you all go off
5 to do this, if that's what's going to happen.

6 First of all, Mr. Weinstein, I don't really understand
7 the last sentence of the top paragraph on page 1 of the
8 defendants' memorandum. You join in the motion provided that
9 certain things that haven't happened yet and may or not may not
10 happen in the future happen? What happens if they don't happen
11 in the future? Do you then retroactively don't join in the
12 motion?

13 MR. WEINSTEIN: Your Honor, I think the two --
14 essentially the two conditions that we had for joining, one was
15 just that we don't object to them taking the deposition as long
16 as obviously we have the right to also cross-examine. So that
17 was just -- I just want to make that clear that we would have
18 the right to cross-examine.

19 If it turns out for some reason that the Danish court
20 did not permit that, I think we would ultimately argue to the
21 Court that his testimony should not be admissible because we
22 didn't have the right to examine, but that -- so we're not
23 saying that the proceedings shouldn't go forward on that basis.
24 It just may -- the outcome of it, depending on how the Danish
25 court feels with it, may impact, you know, our argument on

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1 admissibility.

2 THE COURT: That's what I thought you were getting at.

3 So in substance what this is intended to say is that
4 you join in the motion but without prejudice to any objection
5 you might have to the use of the testimony in due course, yes?

6 MR. WEINSTEIN: That's a fair way of putting it, yes,
7 your Honor.

8 I think the second issue was, again, it's just that we
9 did not want -- nobody knows how long this might take,
10 hopefully, it's done expeditiously, but, of course, we don't
11 know. Anytime you have letters rogatory when it might happen,
12 especially with someone a foreign prison facility.

13 We just wanted to make clear to the Court, I don't
14 think this would be part of what goes to the Danish court, but
15 that we do not want this to delay our trial. So if it turns
16 out that this deposition, for some reason, can't take place,
17 one, ever, but, secondly, you know, past when we're going to
18 start our trial, our position is the trial should start. This
19 is not a delay option.

20 THE COURT: Well, what's the defendant's position on
21 that?

22 MR. DEWEY: Good morning, your Honor.

23 Tom Dewey for Mr. Ben-Jacobs, speaking for the
24 defendants.

25 We think this is critical testimony. We have every

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1 interest in moving it along as expeditiously as possible. We
2 are hopeful, as we've discussed with our colleagues at Hughes
3 Hubbard, that they could use their good offices representing
4 SKAT to facility getting the testimony as quickly as possible.
5 There are prior instances where we were able to secure
6 testimony by letters rogatory at Hague Convention within a
7 couple of months. So we absolutely intend to move this along
8 as rapidly as possible.

9 THE COURT: Well, I assume that's right. But what
10 happens if it doesn't work?

11 MR. DEWEY: Well, your Honor, I would say, let's kind
12 of cross that bridge when we come to it. We think it's
13 critical testimony. We believe that the jury and your Honor
14 should hear Mr. Shah's testimony. I think for present purposes
15 we want to move it along as quickly as possible. And if we hit
16 any road bumps in that process, we'll come right back to your
17 Honor. We're mindful, obviously, of the January trial date.
18 We are prepared to try the case but we do think Mr. Shah's
19 testimony is very, very important.

20 THE COURT: And do the defendants all consent to the
21 trial going forward, regardless of whether the testimony has
22 been obtained by them?

23 MR. DEWEY: Well, I'm not sure I can speak for all of
24 my colleagues on that point. I think our -- my position, at
25 least, Mr. Ben-Jacob's position is that we should do everything

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1 possible to secure this testimony so that Mr. Shah can be
2 presented to your Honor and the jury on January 7th.

3 THE COURT: Mr. Dewey, I took that as given, but I
4 asked a specific question.

5 MR. DEWEY: Yes. I think I would need to speak to my
6 co-counsel on that, your Honor. We do have a matter of eight
7 or nine months. So I'm very hopeful that we would be able to
8 accomplish that given the track record of accomplishing Hague
9 Convention requests quickly in this case.

10 THE COURT: Well, look, I have a significant concern
11 here, and that is that according to your papers he's been in
12 Holland or Denmark for four months before you filed this
13 application. And I don't see why, with a trial already
14 scheduled and with presumably the defense knowing full well
15 where he was all along I should drum up through up a potential
16 road block to moving this case to a disposition. This is
17 pending here now for over five years.

18 MR. DEWEY: Understood, your Honor. We did raise the
19 matter with you at our last conference, which is why we brought
20 on the application as promptly as possible under the
21 circumstances, and I am very hopeful that we're able to secure
22 the testimony promptly, particularly since we do have the
23 cooperation of our friends at Hughes Hubbard.

24 THE COURT: Well, I have reservations about signing
25 this. Obviously, the testimony is potentially very important,

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1 but it should have been done a long time ago. And now what
2 you're trying to do is have your cake and eat it too. The cake
3 is his testimony and the eating is preserving your ability to
4 try to stall the trial, if, for one reason or another, the
5 testimony isn't obtained in advance of January 7th.

6 Everybody wants it to be, but what if?

7 MR. DEWEY: To be clear, your Honor, we do not have
8 any interest in stalling the trial. When Mr. Shah present and
9 president available, if you will, in Denmark, we brought it to
10 your Honor's attention and we made the application. So we want
11 to go forward with the testimony as quickly as possible. We're
12 very mindful of the trial date your Honor set. And we have
13 every intent of being able to meet that date, particularly if
14 we get cooperation from the folks at SKAT.

15 THE COURT: I'll think about it, frankly. And I would
16 like to hear from the defendants on whether they're going to
17 all commit to proceeding to trial on January 7th unless
18 otherwise ordered regardless of whether this is completed.

19 MR. DEWEY: Okay.

20 THE COURT: I don't know what the Danish courts will
21 do.

22 MR. WEINSTEIN: Your Honor, may I raise two other
23 issues related to this?

24 And, of course, look, we will cooperate as much as we
25 can to do things expeditiously, but we've heard many times from

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1 defendants before that because SKAT is part of the Danish
2 government, it must be able to influence, you know, what
3 happens in this or other situations. It's just not the case.
4 Of course, we will do what we can but I can't promise at all
5 that we have some kind of persuasion over either the courts of
6 or the criminal justice system to make this happen on any
7 particular timeframe.

8 The two additional items, your Honor, one is just if
9 the Court, and I apologize because it's not in the papers, if
10 the Court was to grant the request, there is a list of topics,
11 you know, they -- defendants have proposed some, we added a
12 few, it was a joint proposal on the topics. There is one other
13 topic, to the extent that the defendants still are objecting to
14 the admissibility of documents from Sanjay Shah's entity as not
15 potentially authentic, we would like to add to the list, you
16 know, the authenticity of documents coming out of his shop. I
17 think it's related to the substantive subject matter topics,
18 but we just want to make clear that this is something we would
19 want to ask him to the extent that the defendants are still
20 even still challenging that. That's one. And we can send your
21 Honor language to that effect very quickly.

22 The second is a second potential deposition. We had
23 raised this with the defense when they sent us draft papers on
24 the Shah motion, which is, I think as your Honor now knows,
25 there's another individual who was indicted, Mark Patterson who

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1 worked at Solo Capital with Sanjay Shah. He, similar to Shah,
2 was arrested, extradited. He ultimately pled guilty. I think
3 we put that in our most recent submission to the Court on
4 update on foreign proceedings. We would -- if the defendants
5 are going to take Mr. Shah's deposition and in light of the
6 fact that we expect Mr. Shah to say that while there were no
7 shares in this closed loop trading, it was somehow legal, it
8 was not a problem. Mr. Patterson, one of his inside
9 associates, pled guilty to the offense in Denmark and said
10 that, you know, he determined that this was a fraud because it
11 was a closed loop system of purported trading.

12 In fairness, as a counterpoint to what Mr. Shah might
13 say, we would like to take Mr. Patterson's deposition now that
14 he's out from under his criminal case other than the fact that
15 he's pled guilty and is in prison. It would be on the same
16 expeditious manner. He's being held in a Danish prison. We
17 had sought defendants' consent to include it in this motion
18 earlier this week. As is their right, they objected to that.
19 So we would, if the Court is inclined to grant the motion on
20 Mr. Shah, we would, as soon as Monday, file a motion seeking to
21 also have Mr. Patterson's deposition taken.

22 THE COURT: Mr. Dewey, what do you want to say?

23 MR. DEWEY: On the additional topic that Mr. Weinstein
24 has raised, I do not think that that would be a problem on
25 behalf of the defendants. That's not something that we are

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1 going to have a problem with at all, if they want to examine
2 Mr. Shah on additional issues, although we're happy to confirm
3 that.

4 As to Mr. Patterson, the position is rather than
5 different. Mr. Patterson was not disclosed by anyone as a
6 person with knowledge, and Mr. Patterson was, in fact, in the
7 U.K., and accessible to SKAT for years, to your Honor's point
8 about delay, and yet there was no application made to take his
9 testimony during the discovery period.

10 The third point, just to emphasize, your Honor, we
11 think it's really important that Mr. Shah testify at this
12 trial. He testified for days in Denmark about the strategy.
13 He testified that he believed it was lawful, that he had vetted
14 it with a number of different people, and my understanding is
15 that he's going to testify similarly in the U.K. proceeding.
16 It is very important to us, Judge, that we be able to present
17 that testimony.

18 THE COURT: Well, I imagine Mr. Weinstein would say
19 it's very important to them that they be permitted to present
20 the testimony of Mr. Patterson.

21 MR. DEWEY: I mean, I look forward to seeing the
22 application and we'll respond to the application. We think
23 there are very significant differences between Mr. Patterson
24 and Mr. Shah, but, obviously, they have every right to seek his
25 testimony.

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1 THE COURT: You're not committing to anything.

2 MR. DEWEY: Occupational hazard, Judge Kaplan.

3 THE COURT: Pardon?

4 MR. DEWEY: I said, occupational hazard, Judge.

5 THE COURT: Well, yes.

6 What about the authenticity problem?

7 MR. DEWEY: I don't think we're going to have a
8 problem with that. I would just like to confirm with my
9 codefendants, but if there are additional topics they want to
10 cover with Mr. Shah, I don't expect that would be a problem.

11 THE COURT: Well, what about getting the authenticity
12 resolved rather than going to Europe to take testimony on
13 authenticity?

14 MR. DEWEY: Well, we can do that as well. I'm happy
15 to confer with our colleagues on it, your Honor.

16 THE COURT: Okay. Let me move on to two other
17 questions. Your proposed letter lists subjects, not questions,
18 and, thus, assumes that if a Danish court grants the letter, it
19 will let counsel examine. Now, that's often true, and it's not
20 always true. I don't know about that Danish courts in
21 particular, but I've had some experience with letters rogatory
22 and some countries will insist or some judges will insist on
23 conducting the examination, and I find it very hard to see that
24 there would be much value to either side from this deposition
25 if the Danish courts were to conduct the examination

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1 themselves. Am I mistaken? You have to give is a list of
2 questions for them to ask.

3 MR. DEWEY: It's Tom Dewey for Mr. Ben Jacob.

4 I take your Honor's point. I'm not sure I entirely
5 agree. I would respectfully suggest that that is a bridge we
6 can cross, you know, once the letters are signed and we confer
7 with our colleagues at Hughes Hubbard.

8 THE COURT: I hope it's not in Baltimore more.

9 MR. DEWEY: As do I, your Honor. As do I, your Honor.

10 And the precise mechanics of how the testimony will
11 work, obviously, is something we're going to have to work out
12 with Hughes Hubbard, my cocounsel and the folks in Copenhagen
13 or Glostrup or wherever we take him. I think, as to whether
14 there would be value in the judge asking questions, I would
15 reserve on that, and I think we just have to try and come up
16 with a procedure that is workable and that will allow us to
17 present the testimony in a way that is useful to your Honor and
18 the jury.

19 THE COURT: I think you better get this worked out too
20 before I sign anything because what I see here is potential for
21 endless delay, which I'm unlikely to accommodate.

22 Now, one, the matter of utter form, on page 9, you
23 have a statement about the United States recognizing its
24 testimonial privilege against criminal self-incrimination.
25 Obviously, I know what that means, but I'm not sure a Danish

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1 judge does. And a more accurate statement, in any event, would
2 probably be something like, United States law in certain
3 circumstances recognizes a testimonial privilege against
4 compulsory self-incrimination. Certainly, there's no privilege
5 for not taking a plea. And I would have simply interlineated
6 that, but I have a feeling that if I ultimately sign the
7 letter, the Danish authorities are not going to be very happy
8 with one that has handwritten changes it. So you might take
9 that into account. I'm not going to do anything until I get a
10 report from you on all the issues that we've raised and an
11 application from the plaintiffs, if they're going to make it.
12 And as of now, you're on trial for January 7th, and if this
13 takes the whole summer, you're still on trial January 7th. I
14 hope you all understand that.

15 MR. DEWEY: Absolutely understood, your Honor.

16 THE COURT: Okay. I thank you. I hope you have a
17 good weekend.

18 MR. WEINSTEIN: Your Honor, Marc Weinstein, may I
19 just -- may I add one comment?

20 Just with respect to the procedure that your Honor
21 asked about, as far as the Danish judge, how they may proceed
22 if the deposition goes forward. I don't think we will know
23 that until there is a judge assigned because it's our
24 understanding that it's within the discretion of any particular
25 judge. There is very little precedent in Denmark for how these

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1 actually play out. And so we just won't know. It will be
2 entirely up to the judge's discretion. So that so -- we will
3 not be able to resolve that in advance.

4 THE COURT: Sure. Here you're asking me to sign a
5 letter rogatory knowing that the possible outcome is that the
6 judge will not permit counsel to conduct examination in the
7 U.S. style, but will do it himself in whatever style he or she
8 wishes to do it, and you don't have in here a fall-back
9 position beyond giving him or her a list of subject matters.
10 And what happens if it turns out he runs down the list in an
11 hour or an hour and ten minutes, you get nothing much of value,
12 probably nothing admissible, be that prejudices something which
13 I don't mean to prejudice, and then you want to come back to me
14 in December, to say, oh, we want to start over all again with a
15 new letter rogatory. Doesn't it makes sense to provide for
16 that now? I leave that as a rhetorical question, but I look at
17 this and I see quite a number of potential problems that at
18 least could threaten the schedule.

19 MR. WEINSTEIN: Yes. Marc Weinstein, your Honor,
20 understood. And we will discuss with defense counsel what, if
21 anything, can be done about that in advance and provide your
22 Honor with an update.

23 The second thing is just, because Mr. Dewey made note
24 of this before, about the difference between Mr. Shah and
25 Mr. Patterson, in their view Mr. Shah being up available until

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1 recently, first, as your Honor noted, he's been available at
2 least in Denmark for four months, but they've actually made no
3 showing in their papers that he was unavailable when he was in
4 Dubai. They cite two cases, one from 22 years ago and one
5 from, you know, 15 years ago that was open ended, it wasn't
6 clear how those actually resolved, but that -- at those dates,
7 there was no provision for letters rogatory, but there is
8 actually no showing that during the last five years, he would
9 have been unavailable had they chosen to pursue it. We're not
10 objecting on that ground. We're okay if they want, you know,
11 to try together a deposition if it doesn't delay the trial.
12 But if that's the argument as to why Mr. Patterson shouldn't be
13 deposed, well, then, they're on equal footing there, that is no
14 actual difference.

15 MR. DEWEY: Obviously, your Honor, Tom Dewey, United
16 Kingdom and Dubai are differently situated in this regard,
17 dramatically so, but as Mr. Weinstein has joined in the
18 application with respect to Mr. Shah, so, from that
19 perspective, I don't think it's a live issue.

20 THE COURT: Well, I'm not sure that that's right.
21 You're asking me to threaten to upset an apple cart that has
22 taken a very long time to get this close to the destination,
23 and you're asking me to do it on the premise that you couldn't
24 have gotten at him in Dubai, and it's relevant to me to know if
25 that's really true.

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1 MR. DEWEY: We're happy to address it, your Honor, but
2 to be clear, as Mr. Weinstein mentioned to your Honor at the
3 top, this is a joint application to the Court.

4 THE COURT: Well, I understood what Mr. Weinstein
5 said. It was a very interesting sentence in that memorandum
6 that couldn't go unnoticed.

7 Okay. I thank you. I'm not going to set a time limit
8 on this because you have your built-in need to move fast.

9 MR. DEWEY: We do, indeed, your Honor.

10 THE COURT: Godspeed. Okay. Thank you.

11 MR. DEWEY: Thank you very much.

12 MR. WEINSTEIN: Thank you, your Honor.

13 THE COURT: Bye bye.

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